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ABSTRACT

This memorial lecture offers a synoptic overview of the history of childhood and a selective discussion of the current state of children's rights in Australia. Attention is drawn to now generally recognized rights of children and to specific legislation or policy in Australia relative to each of those rights. Specific recommendations, thought to be acceptable to members of Australian society, are made in the effort to further secure the following rights: the right to education, the right to have wishes or interests considered in legal matters before courts, the right to legal representation, the right to personal safety, the right to be born without legal disability, the right to support, and the right to love and affection. (RH)

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The Rights of the Child

by Austin Asche

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Austin Asche

The Rights of the Child

This paper was delivered by The Honorable Mr Justice Asche of the Family Court of Australia as the first Vernon Collins Memorial Lecture in Melbourne on 14 October 1981.

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The Rights of Children

'The history of childhood is a nightmare from which we have only began to waken. The further back in history one goes, the lower the level of child care and the more likely children are to be killed, abandoned, beaten, terrorised and sexually abused'. (De Mauze)

These are the views of one writer who has studied the evolution of child care[1]. They contrast rather strangely with the views of many people in the community. To these people there is some past golden age of childhood which we, in the complexities of modern urban life, have denied our own children. It is Huckleberry Finn land, a picture of the carefree happy country child or, in Australian terms, the bare foot bush boy growing up with his kindly caring extended family all about him learning resolution and sturdy independence to play his part in the development of the nation.

Yet, except perhaps for a fortunate few, history teaches the contrary. There is considerable evidence for the view propounded by a well known text book on child development and personality that, 'until three centuries ago, children in many western European groups were not regarded as a particular class of humans or treated in distinctive ways. Obviously infants needed special care and attention, but once they had been weaned and achieved a minimum of ability to take care of themselves they were generally considered to be 'small adults' mingling, working and playing with mature people'[2]. In the mainly agricultural societies of the Middle Ages, children worked from early infancy, girls were married from the ages of 12 and 13 and the copious birth rate was balanced by an infant mortality of staggering proportions. When the farm labourer migrated to the city at the onset of the industrial revolution, he obviously saw no reason why his children, who had worked on the farm, should not work at the factories. The spectacle of children of seven and eight working all their waking hours in the Satanic mills and the still more diabolical coal mines is too well known and too well documented to admit any doubt that from an early age children took their place in a life which was all too frequently 'nasty brutish and short'.

The move for reform seems to have been prompted by various considerations not always purely humanitarian. True it is that some humanitarian writers were of immense influence. Probably no writer of any age had a more profound influence on the thinking of the educated middle class, who were then becoming an effective influence on Parliament, than Charles Dickens. In *Oliver Twist* he attacked the savagery of the Poor Laws; in *Nicholas Nickleby*, the brutality of many schools; and in *David Copperfield*, the inhumanity of child labour and the shock of deprivation of parental affection. And for those who would suggest that the system could not have been so bad because Dickens himself was able to survive it and succeed, it must be remembered that Dickens was rescued from his ten months travail in the blacking factory and went on to attain reasonable education before becoming an adult. One doubts whether he would have achieved anything had he remained, as most children did, in the hopeless and helpless condition of an ignorant over-worked child growing into an ignorant over-worked labourer. Equally powerful sentiments expressed in Elizabeth Barrett Browning's

The Cry of the Children , necessarily stirred the conscience of the educated classes. And there were other factors. Many who looked with equanimity upon child labour were nevertheless concerned that child morals would be corrupted by the practices and example of their adult workmates. Churchmen deplored the lack of religious education which threatened the immortality of the soul, even if some of them did not concern themselves too much about the working conditions which threatened the mortality of the flesh. Others took the more pragmatic view that childhood employment resulted in a permanently weakened and damaged labour force. In Prussia, for instance, the movement for reform seems to have been prompted, at least in part, because the Army complained that industrial employment made boys unfit for later military service[3].

Mixed though these motives may have been, there was nevertheless a gradual realization in the nineteenth century that the state owed certain basic duties to children if only on the elementary principle that a healthy child was a better protection to the state against external threats, and a better investment for the internal economy.

Until the nineteenth century, the law reflected the general unconcern about welfare of children. The position of the father was almost totally recognized as all powerful; perhaps not to the extent of the paterfamilies of Roman law, who originally had power of life and death over his children, but almost as far as that.

For instance, the common law was quite positive that the father of a legitimate child was entitled to custody of his children to the exclusion of the mother[4].

The Courts of Equity were somewhat more liberal and it was there that the doctrine that the welfare of the child was the paramount consideration was first developed. However, they tended to confine their concern to children of the rich and their original justification for interfering with a father's right, was based not so much on the overall welfare of the child as upon the financial welfare, that is the rights of the child to property. Occasionally they were actuated by moral indignation. Shelley was refused custody of his children on the grounds of his irreligious and immoral principles[5]. And the well-known pioneer of women's rights, Mrs Annie Besant, was deprived of custody of her children on the basis that she had published an obscene pamphlet calculated to deprave public morals (which was in fact a book on birth control), and that she professed anti-religious opinions. She also had the misfortune to have a clergyman as her husband, so that the scales were indeed weighed heavily against her[6].

In the sphere of criminal law, it was acknowledged that a child under seven (and later under eight), could not form the requisite intent to commit crime they being, as the Courts rather unkindly pronounced, 'in the same case as an ox or dog that does harm to a man'. Between eight and fourteen there was a presumption that the child did not have the capacity to understand the nature of his acts but this could be rebutted by proof that the child had a

'mischievous capacity'. In 1629, a boy of eight was convicted of burning two barns and 'it appearing that he had malice revenge craft and cunning, he had judgment to be hanged and was hanged accordingly'[7].

The suggestion therefore that children were better protected or brought up in happier conditions in earlier times cannot be supported. Even that small minority of children of the upper middle classes, who could be said to have escaped the general condition, were frequently deprived early of that direct parental care which we now believe to be vital to a child's up-bringing, and despatched to the rigors and habitual floggings of the public school system of the day or the no less tender mercies of callous and often cruel guardians. Kipling was a victim of the fearful emotional shock of an affectionate and well-loved boy being left, at the age of five, without warning from his parents, in the care of a stranger, while his parents departed for India for three years. When his mother next saw him, he was asleep in bed, and on her approach put up his arm to ward off the blow which he had come to expect from his caretaker.

Although it is fair to say that the concept in custody and access cases that the welfare of the child is the paramount consideration had gradually become accepted over the last century, it was in fact not until 1928 in Victoria that this concept was embodied in Statute as a specific direction to the Courts.

The prevailing philosophy is that children should have rights, are not mere property in their parents' hands and are entitled to protection from cruel and insensitive treatment or neglect. Such a position can be amply justified by studies in psychology, medical observations of deprived children and simple observations about the effect of environment on children. In a society which has generally accepted birth control in various forms and has ceased to regard large families as economic insurance for parental old age, it should follow, and I believe normally does follow, that a child is an anticipated and welcome being, upon whom much time and attention should be spent for the pleasure and development of the parents, the children and the state.

The United Nations Declaration of the Rights of the Child says this:

> *'The child shall enjoy special protection and shall be given opportunities and facilities by law and by other means to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity'.*

No-one will disagree with this as a general statement. But it necessarily implies at least some substantial state intervention. Herein lies the basic problem which is summed up in a recent publication called *Children Australia* as 'that uneasy compromise between child, family and state'[8].

There are areas in which it is generally, (although not universally) accepted, that the state should have some say in the up-bringing of children: education, child health and child support. And on the subject of child maltreatment, a Canadian professor can be seen to be stating widely held views when he

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says, 'if there is anything which clearly justifies dramatic state intervention in family affairs, it is child abuse'[9].

It is interesting to note how much more aware we are of cruelty to children than we were a hundred years ago. Of course, there have always been reported cases of gross abuse of children, but they have been of the most obvious incidents which have not been able to be concealed. The mere fact that we have little or no statistics of the incidence of child abuse in earlier times, cannot be used as an argument that this monstrous affliction to the mental and physical health of children was less prevalent then than now. On the contrary, the climate of opinion which I have described, the lack of regard for any specific rights of the child, the emphasis on parental rights to discipline and the consequent reluctance to interfere with those rights, make it more probable than not that a far greater proportion of children were ill treated in by-gone days.

There was not only reluctance to interfere but even a failure to accept plain facts that made even doctors unwilling to believe that such things could happen. Even in the twentieth century some doctors explained repeated bruisings and broken bones in certain children as an incidence of meta-physical fragility. More careful observation and experience made it clear this was not always so; in many cases, some injuries to children could not have occurred in the way related by their parents or custodians. As one writer has said, 'the stories such as that the baby rolled over on his arm and broke it, or got his head caught in the crib and fractured it, are pure nonsense'[10]. A paediatrician these days is more alert to unexplained injuries, discrepant histories or delay in seeking medical care which can all point to the child abuse syndrome.

At the same time, there has come a recognition that the solution is not always one of punishment of the offender or removal of the child from its custodians. The sad and now well recognized fact that parents who batter children have themselves often been battered in their own infancy. This fact leads medical men and social workers to the hope that counselling, guidance and preservation of the child if possible in the family group, should be sought rather than separation, particularly when it is known that to remove one child who is being battered from that family scene might immediately put another child at risk.

I make these points to emphasise that neither the law nor public opinion has stood still on the question of child welfare; that there have been advances; that the condition of children today is, generally speaking, far better than it was in any earlier period we know of; and that we should look forward rather than back.

We can acknowledge that the Australian community is now far more receptive to suggestions to improve the lot of children than it ever has been — particularly since the conclusion of The International Year of the Child which did alert many citizens to questions they had never given much thought to, in the same way as the International Year of the Disabled

enabled people to recognize the special problems of the disabled. Cynics may describe the professed interests of various politicians and community leaders in these subjects as jumping on the bandwagon. To this one may reply in that terse phrase, 'so what?' The real point is that there is a bandwagon to jump on, and that so many persons alert to public opinion believe, for good or bad motives, that that particular bandwagon is what the public wants.

The prevailing philosophy is well expressed by the authors of a recent book on child welfare in Australia, where they say:

'Children are becoming a precious, that is to say scarce, commodity. We are not simply talking of children within a humanitarian framework, but also a framework of hard-headed concern about national survival. Investment in children today is investment in the future of the nation'[11].

Australians are a pragmatic people. We do not insert into our State or Commonwealth constitutions those broadly-based declarations of rights known as constitutional guarantees. We prefer to fit specific legislation or specific case-law to specific problems on the Tennysonian view that —

'. . . . freedom slowly broadens down,
From precedent to precedent'.

There are, of course, two schools of thought about this. I mean no disrespect to our transpacific brethren if I say no more than that it has not been established that individual freedoms or minority rights are less protected in Australia where there are virtually no constitutional guarantees than in the United States where there are many. Chacun à son goût. Certainly we now have laws against discrimination by race or sex. But that is the point. They are laws, not declarations, containing remedies not assertions.

This is not to denigrate such international statements as the United Nations Declaration of the Rights of the Child. They are a starting point, a crystallisation of international views and a justification for action. My point about saying that Australians are pragmatic is that they would rather examine how such declarations can be translated into practical legislation than incorporate them into the esoteric nepheloccoccugia of a constitutional guarantee.

In keeping with this approach I would like to draw attention to certain rights of children, now generally recognized, the specific legislation or policy relative to each of those rights and some specific recommendations which I believe can improve those rights and which I believe society is ready to accept. We should help our politicians if we can. If this is castigated as a policy of gradualism I must as one Judge said, when criticised by another as a 'timorous soul' bear that with such fortitude as I can command;[12] in the belief that it is better to cross the river by single stepping stones than sit down and refuse to move until a bridge is built.

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I have not yet defined a child. One can only do so by an age scale. The law is rather confused. In the electoral sense he is anyone under eighteen. In some States a person under ten has no criminal responsibility; in others the age is eight; between those ages and fourteen, he has limited criminal responsibility. The marriageable age for a male is eighteen and for a female sixteen, although she will still need her parents' permission to marry between sixteen and eighteen unless a Court dispenses with that permission. With special Court permission a male can marry at sixteen and a female at fourteen, but such applications are rare. In the Victorian Social Welfare Act a 'child' is a person under fifteen; after that he becomes a 'young person'. In education, he must attend school till fifteen. I will not trouble you with the technicalities. It will be sufficient if we speak of anyone under eighteen.

The Right to Education

Shaw Neilson was born in 1872. He worked from childhood, spending most of his life in the backbreaking ill-paid drudgery which was the lot of the itinerant farm labourer. Laboriously and in school exercise books, he wrote some of the loveliest lyrics of Australian poetry.

'Oh 'twas a poor country, in
Autumn it was bare,
The only green was the cutting grass
and the sheep found little there.
Oh the thin wheat and the brown oats
were never two foot high,
But down in the poor country no
pauper was I'.

Shaw Neilson received a total of about two years schooling. His lack of education condemned him to poverty even if he was not a pauper in spirit. He was penalised all his life. It is patronising and insensitive to say that hardship was the begetter of his poetry. He stands as an example of the thousands who were denied a basic right.

The country he wrote about was not always a poor country to him and he sang its praise in other poems. It was the Mallee-Wimmera district. It was at Nhill he last went to school. A generation later, Professor Collins was born at Nhill and went to school nearby, moving to Horsham High School for his secondary education.

Well, we have achieved the right to education for all children. Now we should examine it critically.

The right to education must imply the right to be educated by properly trained teachers. Having had the privilege of chairing The Victorian Enquiry into Teacher Education, I wish to say at once that we have a splendid and dedicated body of teachers in Victoria. Of course there are exceptions. I believe they are few. We must keep up the standards. We must continually examine the processes of selection, pre-service and in-service training, treating the profession of teaching as a continuum and making proper allowance for

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teachers to keep up in a world of change. These matters have been dealt with by several State enquiries and a national enquiry, all fairly recently[13]. I will not take up time discussing their many recommendations, most of which, I hope, will ultimately be adopted. They would have interested Professor Collins, who was himself a State school teacher for a short time.

The Commonwealth Tertiary Education Commission has recommended various amalgamations of teacher training colleges. I know the Victorian Government does not agree with some of these. The position is fluid and I am not qualified to make predictions. I merely state the obvious that any re-organization that occurs can only be justified by proof of greater service to the children who are the ultimate consumers. If economies can be made without affecting adequate teacher supply, so be it. But any deflection of teachers now will affect a new generation in a significant way.

A popular cry has been that the modern child lacks the skills of numeracy or literacy possessed by his predecessors. That has been positively refuted by research but no doubt the complaints will continue. What is a more relevant question is what should we teach our children. Everyone has theories about this. Perhaps the child's right to education should include a right not to be exposed to every whim of every amateur educator. But certainly it is accepted that every child should have the right to be educated to develop his own individual abilities; which is not the same as saying that every child should go to the University. The development in the TAFE sector of education in the last few years is an encouraging sign. We must forsake the snobbery professions and appreciate that technical skills are as important in a computer age as academic skills. Excessive reliance on academic ability breeds unnecessary pressures. I believe we have already taken some steps to correct this sort of thing since an eminent critic wrote this in 1970:

'Most children are subjected to an over-academic, excessively competitive education in spite of improvements here and there. Students are rejecting this sort of education because it is loaded with unnecessary pressures and stresses and is not sufficiently related to life; disaffected low attainers reject it because they feel that it rejects them'.

Might I put in a plea for a broad course teaching children not just sex education but family education. There are many facets of such a course which should examine as much the successful marriage as the unsuccessful, the economic consequences of marriage, and the medical, psychological, legal and social aspects of marriage and children. I note some recommendations of the Report of the National Committee of Non-Governmental Organisations on the International Year of the Child along these lines and I observe that the Committee included Dr J. Harley from the Australian College of Paediatrics and Dr Isbister from the Royal Australasian College of Physicians.[14]

The Right to be Considered

I prefer the term 'considered' rather than 'consulted'. One can [illegible] speak of 'consulting' the wishes of a two-year old child. We have taken [illegible]eral steps in this direction. The *Family Law Act* provides that where a child has attained the age of fourteen, the Court shall not make an order for custody or access contrary to his wishes unless the Court is satisfied by reason of special circumstances it is necessary to do so. In fact this provision will probably be soon amended to direct the Court to take into account the wishes of a child without any age limit in appropriate circumstances. The Family Court does this already. As you can well imagine there are many children of eleven or twelve, mature enough to make a fairly responsible choice as to which parent they desire to live with, just as there are many of that age who cannot. A very real advance under the *Family Law Act* has been the appointment of counsellors. These people, who are trained social workers or psychologists with field experience, interview the child, the parents and any other persons who may play a significant part in the life of the child. One of the skills which the counsellor must have, is to ascertain the real wishes and needs of the child without necessarily placing that child in direct confrontation with one or other parent. Many children are wiser than their parents in this and will quite properly say that they do not wish to choose; but they will give fairly clear indications of their preferences in other ways. The counsellor also exercises his skills in endeavouring to bring the parents to a realisation that the children should not become involved in internecine warfare. Counsellors in the Family Court have a 70 per cent success rate in bringing parties to mutual agreements as to care of the children without going to Court. Every agreement thus achieved, is a service to the child, the parents and the community because virtually every Court contest on these issues is deeply disturbing emotionally for the parents, and that disturbance reflects on the children. Access to counsellors is at the direction of the Court, is open to all parents involved in custody and access disputes and, of course, at no charge to them.

Because of constitutional limitations in the Family Court, which is a Federal court, it can deal only with children of a marriage and not with ex-nuptial children or children of a former marriage who form part of the family with which the Court is involved. The success of counselling procedures is sufficiently great for me to make a plea on behalf of those children who do not come within the ambit of the Family Court. Questions as to their custody must be left to the Supreme Courts of the various States and the judges of those Courts are generally deprived of the advantages of access to counsellors or a counselling report. Some States have indeed acknowledged that they should refer their constitutional powers over these children to the Family Court although that acknowledgement has not as yet been put into Statute. Iam not concerned here with whether a Federal court or a State court should deal with these children, although naturally, my personal preference would be for the Family Court to be able to do so. But I would plead that if the jurisdiction over such children remains with the State courts, that the States should set up a body of counsellors to advise those courts on the welfare of these children in the same way as the counsellors of the Family Court.

But the right to be considered should not appear only in court processes. It should extend to all proposed legislation. This has been done in South Australia where 'family impact statements' are prepared which are appended to all Cabinet submissions so that the Government has at hand, in discussing proposed new legislation, a summary of its potential effects on the family. Every government department in South Australia has a person trained by the Department of Community Welfare to act as a liaison officer with that department on his own and to assist in the preparation of the 'family impact statement'. The statements themselves are reviewed after twelve months. This is an original and exciting concept and could well be adopted in Victoria with additional and special reference to children.

A further recent development in South Australia, is proposed legislation to create a Children's Interest Bureau, being a body of up to seven people with a proved and special interest in children, to act as an advisory committee to the Minister for Community Welfare on matters affecting children.[15]

For those who would wish to make further submissions on the welfare of children and their right to be considered, I draw attention to the Family Law Council set up to advise the Commonwealth Attorney-General on matters relating to family law. This body welcomes suggestions in this field and has had significant success in promoting amendments to the legislation.

For those interested in the broader field of research, compilation of statistics and detailed continuing studies of the family in Australia, I refer you to the Institute of Family Studies established by the Commonwealth Attorney-General in February 1980. The Institute is rapidly becoming what it was meant to be – a national centre for scientific enquiry into all aspects of the Australian family. I commend it both to those who seek information and those who wish to give it.

Again, I make the point that Australia is not standing still on the question of family welfare and children's rights. If there is much to be done, there are, at least, avenues through which interested persons can make their approach.

The Right to Legal Representation

Where the child is injured in an accident or may have some other sort of legal claim, the law tends to leave it to the parents to bring the action on his behalf. But some parents may irresponsibly allow the child's claim to lapse, or be apprehensive of bringing an action in which they will be personally responsible for costs if the action is lost. It has been suggested by His Honour Judge Hewitt, that there should be a responsible body clothed with the duty of taking such actions on behalf of the child.[16] Doctors or social workers would then have a resource to turn to if they felt that a child needed independent legal representation. This would be of particular importance where the child's action was against the parents or guardian. This could be a function of the newly established Legal Aid Committee of Victoria.

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Under the *Family Law Act*, the Family Court can appoint a person to represent the rights of the child. This is not yet very often done because the counsellors can usually bring home to the court the child's interests and because the appointment of a third representative apart from the representative of the husband and the wife, will increase the cost and length of the case at the expense of the parents. In proper cases, however, this procedure can be a considerable help to the court and the parties themselves, and further consideration is being given to overcoming the problems.

There is also available in Victoria a procedure to make a child a ward of the court. Theoretically such an application can be made by anyone, although the court would discourage the interfering stranger. But if a case can be shown for the safety and welfare of the child, there is no reason why the procedures should not be taken, particularly if the suggestion of His Honour Judge Hewitt is implemented of having some responsible body to whom such matters could be referred and which could then act for the child. Various examples come to mind where the court's protection in what is known as its *parens patriae* jurisdiction could be sought if the wardship procedure were more widely known. For instance, the problem of the young girl who is being pressured by parents to place her baby out for adoption; or the alternative of the girl who wants to let her child be adopted or fostered out against the wishes of her parents or the father of the child. All such applications would be subject to the rule that the court would act for the paramount welfare of the child.

The Right to Personal Safety

I have already mentioned the tragic cases of child abuse and neglect which are known all too well to child psychiatrists and paediatricians. It is here that the problem of state interference looms very large. Many persons are understandably reluctant to remove a child from a family even where there is evidence that the child is in danger. Lawyers are properly concerned with bureaucratic intrusion into personal rights, although I would hope they recognize that the child as well as the parents has rights. Paediatricians themselves must often return a child to a parent or guardian whom their experience suggests will continue to ill-treat the child but where they do not have the requisite legal proof. Amendments to the *Social Welfare Act* in Victoria, now provide for voluntary notification to police or authorised persons to protect children where there is suspicion of child maltreatment or neglect. There are provisions in the Act to protect persons so notifying from any attack, based on breach of professional ethics in any Court proceedings where the notification is made in good faith.[17] The time has come to allow paediatricians or child psychiatrists a holding power in emergencies. It is little comfort to a doctor to notify, knowing that the child must be returned while the processes of investigation are set in motion. Where the child is in immediate danger, there should be a provision to allow a paediatrician or child psychiatrist to keep the child in hospital or some other care centre for a specific period, say fourteen days, during which time an investigation may be undertaken. At the end of that time there should be a right to a further referral to two paediatricians or child psychiatrists with the parents having the right to put their case. At that stage, the parents

should have the right to legal representation if required, and the Director of Community Welfare Services informed. I have not dealt with the legal technicalities, but for those who are interested, there is draft legislation along these lines included in an appendix to the *Report of the Child Maltreatment Workshop* held in Melbourne in 1976.[18]

The protective jurisdiction of the Family Court is not yet sufficiently widely known. It has its constitutional limitations but it does have the power, on the application of a spouse, to restrain the other spouse from assaulting, molesting or harassing children. Doctors, nurses, teachers and social workers should know of these powers.

Finally, in this area, I draw attention to the provisions of the *Community Welfare Services Act* which provides that one of the functions of the Department of Community Welfare Services is to ensure that information is disseminated to the public with regard to family welfare.[19] Although much has been done in recent years through the media, it is plain that much more should be done to alert the public.

We must increase our efforts here. We must have wide and constant publicity. While one child remains battered or neglected in Victoria, we cannot say we have reached a truly civilized society.

The Right to be Born without Legal Disability

Society has quite recently made substantial progress in this area. The legal stigma of illegitimacy has been removed by the *Status of Children Act* in Victoria. There remains however, a small but growing number of children who are not covered by this Act because they have been born by the processes of AID. These children still suffer legal disadvantage. They cannot inherit as 'children' under the intestacy of their accepted father nor can they share in wills or settlements of the accepted father or his relatives where those wills or settlements speak only of 'children' or 'grandchildren' or 'issue'. The law can be very simply amended by providing that where in the case of a married couple or a de facto couple, a woman conceives an AID child with the consent of the male partner, that male partner shall be deemed for all legal purposes to be the father. This has already been mooted by the Victorian government and I would merely urge that appropriate legislation be brought forward quickly because this class of children is increasing. Although we have also heard much of in vitro fertilization, and we can be justly proud that our Victorian doctors are leading the world in this area, this does not usually create the same legal problems as with AID because it is usually the husband who provided the sperm and he is therefore in all legal senses the father. Where it is not the husband or male partner who provides the sperm, the situation is similar to AID and the proposed legislation should cover that situation.

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The Right to Support

Legislation stemming from the Poor Laws has given the child the right to support from his father for many years. More recently, in acknowledgement of the increased economic status of many women, that right has been extended to enable the child to claim from his mother. Such a right may be of little use when either or both parents are below the poverty line. It is time that we recognize the value of children in the community by considerably increased child endowment. This is sometimes justified on the basis that a baby is the best immigrant and that increased child endowment will necessarily encourage larger families. This has not proved the case in countries such as France where child endowment is substantial. But we should look to another argument. Child endowment should be a recognition of the value of individual children to the community and to enable one parent at least to remain at home out of the work force to bring up children in their formative years. It is very difficult for such a parent to resist the economic rewards of employment, and endowment should more substantially recognize the person devoting herself or himself to the up-bringing of children as performing an important social and economic task in the community. Furthermore, the increase in endowment necessarily indicates the community's recognition of the value of a child and, even if we put it in quite selfish terms, means that those who care for children necessarily recognize that it is to their economic advantage to care well for them, lest some other claim custody. In other words, and to put it more crudely still, let us make the child valuable.

The right to support should, of course, mean something more than financial support. I quote again from that author whose name I will not yet reveal:

'More than financial help is needed and this, at times, is quite inadequate today . . . There appears to be a need today for family welfare agencies or social welfare agencies to be readily available to families locally. There needs to be a vast extension of these social welfare agencies near to the home of families in trouble'.

In this respect the French situation is of considerable interest because it seems accepted that high endowment payments necessarily and properly involve some government controls. The French Civil Code provides that parents must spend the endowment on the child's welfare. If this is not done, the endowment is removed. Indeed, the legislation plainly states that 'it is the children not the parents, who are subjects of the right'. The Minister of Health and Social Security provides Family Allocation Centres throughout the country and these in turn are staffed by social workers, home help and family educators. There is apparently little resentment about such persons inquiring about how the endowment is spent; and certainly the French citizen seems more prepared to use the various social aids offered by the government for family assistance.

It is interesting to note that as long ago as 1942 when child endowment was first introduced to Australia, it was suggested that some regulation over its use could be a way of monitoring children in trouble.[20]

This brings us back to the old problems of state interference. If there were substantial increases in child endowment, there would be some justification for the French view that the community's money should be seen to be spent properly. It is, of course, a matter of degree, but one safeguard would be to invest the Ombudsman with particular powers of examination of departmental intrusion in these areas.

The Right to Love and Affection

I do not need to expound on this. No audience made up of those who deal with children can have any doubts that the healthy development of a child is inextricably connected with love, care and affection. We cannot legislate directly about this. We can create a climate of concern by teaching children human relations, providing support both financial and emotional and striving to keep the interests of the child in the forefront of all legislation. Let me quote once more from the civilised humane and far-sighted man whom I will now name – although most of you have probably guessed. He is, of course, Professor Vernon Collins. I have taken extracts from an article he wrote in the *Medical Journal of Australia* in 1970.[21] This is something more of what he said:

'We are more conscious than ever today of the role of family life in the health of children. We recognize how the small child's basic needs, physical emotional and mental, are met in the context of affectionate and understanding family life which provides the growing child with a sense of security and being wanted . . . Social and emotional problems in the family may affect the child physically as well as emotionally and intellectually'.

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15. I am indebted to Mr I.S. Cox, Director-General of the South Australian Department of Community Welfare and Member of the Family Law Council for this summary of the South Australian position.

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20. I am indebted to Mrs Stephanie Charlesworth of the School of Social Studies, Melbourne University who has given me information and access to her, as yet unpublished, paper on 'Social insurance and income maintenance for families'.

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